

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

ROSE MARIE WEAVER,

No. 09-12553

Debtor(s).


Memorandum re Scope of § 329

From his response to the court's order to show cause, it is apparent that attorney Elias is interpreting the word "representing" in § 329(a) of the Bankruptcy Code narrowly, as meaning "appearing for." However, the purpose of the attorney disclosure requirement is twofold: to insure that estate assets are not secreted with the help of an attorney in the guise of fees, and to make sure debtors are not gouged. See *In re Merriam*, 250 B.R. 724, 731 (Bkrcty.D. Colo.2000), and cases therein cited. Allowing an attorney to remain anonymous in the wings would defeat the purpose of the statute, which is to be broadly interpreted. Thus, fees paid to an attorney in relation to a bankruptcy are subject to the provisions of § 329 even when the attorney is not the attorney of record. *Hale v. U.S. Trustee*, 509 F.3d 1139, 1147 (9<sup>th</sup> Cir. 2007).

Moreover, Rule 2016(b) of the Federal Rules of Bankruptcy Procedure, promulgated to give effect to § 329, applies to "[e]very attorney for a debtor." Under state bar rules of professional conduct, an attorney-client relationship is created by any sort of consultation or advice, even if given for no fee at all. *Beery v. State Bar*, 43 Cal.3d 802, 811(1987).

1 The court interprets “representing” in § 329(a) as meaning “providing any services, including  
2 advice,” and is prepared to issue an order to that effect if Elias wishes to obtain appellate review.  
3 However, Elias may obtain expungement of the order to show cause with no appearance necessary if  
4 he consents to an order that he disclose any fees paid to him for any services, including advice, in  
5 connection with a bankruptcy case which has been filed or is contemplated. If the case has already  
6 been filed, Elias shall file the disclosure himself; if it has yet to be filed, he shall give the debtor the  
7 disclosure with instructions to file it if a bankruptcy is filed. The form proposed by Elias is acceptable.

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9 Dated: December 7, 2009

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12 Alan Jaroslovsky  
13 U.S. Bankruptcy Judge  
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CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the Northern District of California hereby certifies that a copy of the attached document was mailed to all parties listed below as required by the Bankruptcy Code and Rules of Bankruptcy Procedure.

Dated: Dec 7, 2009

  
Dawn Passalacqua  
Deputy Clerk

Stephen Elias.  
P.O. Box 1570,  
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